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February 6, 2017

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Filing of the American Cable Association on the Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

On February 2, 2017, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Alexander Minard, Heidi Lankau, and Katie King of the Wireline Competition Bureau to review ACA’s proposed methodology (as set forth in its January 30, 2017 *ex parte*¹) to weight bids in the Connect America Fund (“CAF”) Phase II competitive bidding process (or auction).²

ACA representatives explained that its weighting methodology was designed to strike an appropriate balance between broadband performance and cost-effectiveness. It would achieve this outcome by enabling bidders, regardless of which network technology they deploy -- satellite, fixed wireless, or wireline with either copper, coax, or fiber -- to have a similar

¹ *Ex Parte* Letter from Thomas Cohen, Counsel to American Cable Association, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Jan. 30, 2017).

² *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64, ¶¶ 205-229 (rel. May 26, 2016) (“CAF Phase II Auction Order”). *See also id.*, ¶¶ 14-18.

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opportunity to prevail in the auction.³ This will maximize participation in the process, including by smaller, experienced wireline providers, who would be bidding to provide higher performance service in areas where they had no infrastructure. By contrast, should a weighting methodology not maximize participation, winning bids would not be at their most cost effective level, which would restrict the number of locations served with the limited CAF support.⁴

ACA developed its weighting methodology by examining current consumer demand for and provider supply of broadband service and expected demand and supply over the program's duration. Based on these market data, broadband service at a speed of 10/1 Mbps (Minimum) does not meet the Commission's own threshold for acceptable broadband service.⁵ Further,

³ In developing its proposed weights, ACA aimed to achieve a technology neutral auction. Despite extensive efforts, however, ACA found it could not develop a completely neutral weighting system because of various factors, including the fact that entities using different technologies with different costs could bid for the same tier. Accordingly, ACA modeled different scenarios and proposed weights where the distribution among modeled bids was the closest, i.e. a methodology that is most likely to produce a technology neutral auction. ACA acknowledges that, according to its modeled results, its weighting methodology favors bidders seeking to offer Minimum service via satellite and Baseline service via fixed wireless or satellite. Such a balance appears more likely to achieve a result consistent with the position of Commissioner O'Rielly. *See* CAF Phase II Auction Order, Statement of Commissioner O'Rielly.

⁴ In a February 1, 2017 blog post, Commissioner O'Rielly states, "[t]he institution of reverse auctions uses market forces to get providers to compete – thereby driving down the subsidy costs – for particular areas." *See* Commissioner Michael O'Rielly, "Federal Broadband Infrastructure Spending: Potential Pitfalls," FCC Blog (Feb. 1, 2017), available at <https://www.fcc.gov/news-events/blog/2017/02/01/federal-broadband-infrastructure-spending-potential-pitfalls>. However, costs will be driven down only where an auction maximizes the number of bidders.

Further, should the Phase II auction fail to attract bidders to provide higher performance service, the Commission would foreclose the opportunity to cost effectively meet the needs of the community, including schools, libraries and rural health care providers, that can only be achieved by having access to such higher performance service and by coordinating the CAF program that funded the deployment of this infrastructure with the other universal service programs, which Commissioner O'Rielly seeks to achieve. *See id.*

⁵ *See* "FCC Finds U.S. Broadband Deployment Not Keeping Pace," FCC News (Jan. 15, 2015) available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-331760A1.pdf. Many households regularly consume almost 200 GB of data each month. Additionally, the Commission has found that lower-speed technologies like DSL are generally less reliable than higher-speed cable and fiber services. *See also Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment*

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Commission data also indicates that current consumer demand and usage in the U.S. exceeds Baseline speeds and data caps and over time that gap will grow significantly. The Above-Baseline tier best matches consumer demand and usage over the 10-year period for the program. As for the Gigabit tier, it provides the ultimate assurance that demand and usage will not exceed the capabilities of the supported network.

Because of these material policy and legal shortcomings with the Minimum and Baseline broadband performance tiers, Above-Baseline bids should receive a significant bonus. As for the Gigabit tier, while performance is the most-future proof, which would give consumers and communities the ability to meet their many needs over the long run, most urban consumers are not likely to subscribe for the next five years. ACA thus proposes that Gigabit bids should receive a modest percent advantage over Above-Baseline bids. For the marginal difference in the limited long term value of Minimum and Baseline bids, bids for the Minimum tier should receive a minimal penalty. As for latency, because higher latency greatly affects the quality of real-time applications, bids for High-Latency should receive a modest penalty.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,



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cc: Alexander Minard
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Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 15-191, 2016 Measuring Broadband America Report, FCC 16-6, ¶ 104 (rel. Jan. 29, 2016) ("in general, consumers of higher speed broadband services, such as those provided by Cablevision, Comcast and Verizon FIOS, receive high quality services, while services provided by some DSL providers do not consistently provide high quality services.").